

Docket No. 49945 RCE (70116)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Cesarczyk, Edward J. Confirmation: 3199
U.S.S.N.: 09/778,125 Art Unit: 1743
FILED: February 6, 2001 Examiner: L. Alexander
FOR: DIAGNOSTIC TESTING DEVICE AND METHOD OF USE
THEREOF

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted by facsimile transmission to Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450,

VIA FAX 571-273-1254
Att: Examiner Alexander
Art Unit 1743

TOTAL PGS. 13

on July 16, 2004.

By: 
Helen Murray Tarbi

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 02209-9169

Sir:

RESPONSE TO OFFICE ACTION, FINAL REJECTION

07/20/2004 NLAURENC 00000002 041105 07270005
01 FC:1251 Amendments to the Claims are reflected in the listing of claims, which begins on
110.00 DA,
page 2 of this paper.

Remarks/Arguments begin on page 10 of this paper.

JUL-16-2004 FRI 03:34 PM EDWARDS & ANGELL

FAX NO. 617 439 4170

P. 11

Cesarczyk, Edward J.
U.S.S.N.: 09/778,125
Page 11 of 11

Also, as explained previously, the hollow portion of the housing of Cesarczyk '178 cannot be considered a fluid chamber, as claimed herein, because the fluid chamber is a separate element of the housing that is positioned within the hollow portion. Further, there is no aperture as taught by Applicants', which conveys the specimen from the fluid chamber to the test membrane.

In addition, the cited reference is not prior art. The present application and the cited reference have a common inventor. Further, both the inventors were and are employees of the common assignee. A declaration by Edward J. Cesarczyk is submitted herewith in support of this assertion.

CONCLUSION

Reconsideration and allowance of claims 1-34 is respectfully requested in view of the foregoing discussion. This case is believed to be in condition for immediate allowance. Applicant respectfully requests early consideration and allowance of the subject application.

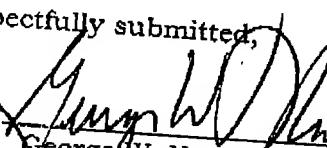
Applicant petitions for a one month extension of time. Please charge Deposit Account No. 04-1105 for the extension of time.

If any additional fee has been inadvertently overlooked and is required, please charge Deposit Account No. 04-1105 for any required fee.

Should the Examiner wish to discuss any of the amendments and/or remarks made herein, the undersigned attorney would appreciate the opportunity to do so.

Respectfully submitted,

By:


George W. Neuner
Reg. No. 26,964
Edwards & Angell, LLP
P.O. Box 55874
Boston, MA 02205

Date: July 16, 2004

(617) 439-4444
Customer No. 21874

NOSE 451901.1